

## REMARKS

The Examiner has issued a restriction requirement to one of the following inventions under 35 U.S.C. 121:

- I. Claims 1-16, drawn to a composition, classified in class 424, various subclasses or class 252, various subclasses, depending on the liquid comprising the core.
- II. Claims 17-25, drawn to a process of treating human epidermis and/or hair classified in class 424, subclass 401 and/or 70.1.

It is the Examiner's opinion that Inventions I and II are related as product and process of use but can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. In the instant case, the Examiner states that the composition of group I containing a liquid such as a fragrance or a malodor counteractant may be used for treating inanimate surfaces or room deodorants not just for human epidermis or hair.

The Examiner further states that a composition used for non-living or inanimate purposes is not the same as the method of process of treatment of skin or hair and therefore examination of a composition that has a different use or utility from the process of treatment is burdensome.

Applicant elects with traverse Group I, Claims 1-16 drawn to a composition, classified in class 424, various subclasses or class 252, various subclasses, depending on the liquid comprising the core. Applicant have withdrawn 17-25 and Claim 7 for not reading on the elected invention and reserve the right to rejoin upon allowance of the generic claim or file divisional applications not the non-elected subject matter.

Applicant disagrees with the Examiner's determination of that the inventions are independent and distinct as claimed. The Examiners states that in the instant case, the composition of group I containing a liquid such as a fragrance or a malodor counteractant may be used for treating inanimate surfaces or room deodorants not just for human epidermis or hair. The Examiner states that the claimed composition is not restricted to a skin or hair care beneficial agent and thus causes a serious burden on the Examiner.

The Examiner is not correct in the reading of the claims.

Claim 1 states in the preamble, *inter alia*, **A human epidermal and/or hair treatment composition comprising an...**

Thus, the composition claims 1-16 is limited to a human epidermal and/or hair treatment composition and does not extend to a composition for treating inanimate surfaces or room deodorants.

Therefore, the inventions of Group I and Group II are not distinct would not cause a serious burden on the Examiner if restriction is not required.

Furthermore, the Examiner states that the application contains claims directed to the following patentably distinct species:

1. Fragrance
2. Solvent
3. Malodor counteractant
4. Beneficial Agent

The Examiner states that the species are independent or distinct because the species claimed above recite mutually exclusive characteristics and are not obvious variants of each other. The Examiner states that a solvent is not always a fragrance or a malodor-counteracting compound and therefore it is a search burden to examine all the species. The Examiner states Applicant is required 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held allowable.

Applicant asserts that the restriction amongst the species is not clear since the Examiner has not explained if the species relate the liquid present in the core of the microcapsule, in the human epidermal and/or hair treatment compositions or both.

Applicant requests clarification on this matter.

In an effort to respond to the Restriction Requirement, Applicants have provided the following species election:

Applicant elects the fragrance composition provided in Example A of the specification which comprises a mixture of ethyl undecylenate, geranyl anthranilate,  $\alpha$ -irone, phenyl ethyl benzoate, d-limonene, cis p-t-butylcyclohexyl acetate, amyl cinnamic aldehyde, hexyl cinnamic aldehyde, hexyl salicylate.

Applicant elects the malodour counteractant composition as disclosed in the third paragraph on page 14 of the specification which comprises 1-cyclohexylethan-1-yl butyrate; 1-cyclohexylethan-1-yl acetate; 1-cyclohexylethan-1-ol; 1-(4'-methylthyl)cyclohexylethan-1-yl propionate; and 2'-hydroxy-1'-ethyl(2-phenoxy)acetate, and mixtures thereof.

Applicant elects the tri-glyceride ester of a mixture of caprylic acid and capric acid (Neobee oil) as the solvent, as disclosed on page 7 of the specification and in Example I.

Applicant elects a skin moisturizer as the beneficial agent as disclosed on page 14 of the specification and in Example V on page 37.

It is Applicants opinion that the Examiner has not listed all of the species presented in the claims, for instance Applicants also claim the combination of fragrance and malodour counteractant as presently claimed in Claim 2. MPEP 806.04(b) states that two different subcombinations usable with each other may be a species of a common generic invention, thus, the combination of fragrance composition and a malodour counteractant is a species of the common generic invention. This should also be listed as a species to elect.

#### **CONCLUSION:**

In view of the foregoing, Applicants respectfully request reconsideration, withdrawal of rejections, and allowance of all claims now present in the application.

The Commissioner is authorized to charge any required fees, including any extension and/or excess claim fees, any additional fees, or credit any overpayment to the Deposit Account No. 12-1295.

Respectfully submitted,

/Elizabeth M. Quirk/

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